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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket 96-45
Federal-State Board on	)	
Universal Service	)	

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REPLY COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES ON THE JOINT BOARD'S RECOMMENDED DECISION

The Association for Local Telecommunications Services, pursuant to Public Notice DA 96 1891, released November 18, 1996, hereby submits its reply comments on the Recommended Decision of the Federal-State Joint Board on Universal Service ("Recommended Decision"). ALTS reply comments are limited to various issues relating to the method of determining the size of the Universal Service Fund, and the collection and dispersal of such funds.

In its initial Comments on the Joint Board's Recommended Decision, ALTS indicated that its primary concern at this time is that the Universal Service Fund be limited to the amount necessary to accomplish the articulated goals of Section 254. ALTS continues to have these concerns and notes that there is substantial agreement among the commenters in this proceeding that the Commission must be vigilant in ensuring that whatever monies are collected are used solely for the purpose of providing service for persons who would not otherwise be able to afford service and for providing discounted telecommunications services for schools, libraries and rural health providers.

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ALTS recognizes that the decisionmaking that the Commission will undertake in this proceeding is an evolving one and that significant additional work, particularly on the proposed cost models, will occur in the up coming months. The Joint Board and the Commission are to be commended for their openness in addressing the issues and the long hard hours that already have gone into and will continue to go into this process. ALTS is hopeful that the end result will be a well thought out program that satisfies the statutory requirements without unduly burdening any segment of the communications industry or consumers.

I. THE UNIVERSAL SERVICE FUND MUST BE LIMITED TO THE MINIMUM AMOUNT NECESSARY TO ACCOMPLISH THE GOALS OF THE ACT AND SHOULD NOT BE USED TO "MAKE WHOLE" INCUMBENT LECS THAT SUFFER LOSSES DUE TO COMPETITION.

The initial comments reflect relatively widespread agreement that the size of the high cost universal service support fund should reflect the difference between a national benchmark of some sort, and the appropriate proxy cost calculations for each local exchange provider. The Joint Board proposes that all current local revenue flows be used to calculate the national benchmark (Recommended Decision at ¶¶ 299, 309-317).

ALTS agrees with the decision to include all local revenues in such a calculation. In its comments, Time Warner notes the absence of any consideration of yellow pages revenues in the Joint Board's discussion. (Comments of Time Warner at 21). At

divestiture, the yellow pages were specifically given to the Regional Bell Operating Companies to support affordable local service.[1] Time Warner is correct that to exclude this substantial source of revenue would give incumbent local exchange carriers a large and unwarranted windfall, while including such revenues would disadvantage new entrants as those revenues will not be available to new entrants. ALTS supports the Time Warner proposal to establish two separate benchmarks, one for new entrants that does not include yellow pages revenues and one for incumbent LECs that does include those revenues.

The Joint Board and a number of commenters, including MFS, have pointed out that a simple reliance upon revenues as the benchmark against which costs will be compared could result in too low a benchmark if revenues fall due to competition.[2] However, declining prices in a competitive market are reflective of declining costs, brought about by increased efficiency in response to the competition. In order to ensure that the universal service fund does not increase in size over time and appropriately reflects these positive effects of competition the Commission should either adopt the Joint Board's recommendation to review the benchmark on a periodic basis or take other action, perhaps setting a floor for the revenues considered, to address

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[1] See United States v. American Telephone and Telegraph Co., 552 F. Supp. 131, 193-94 (D.C.C. 1982).

[2] See Comments of MFS at 25-28; see also Recommended Decision at para. 310.

this issue.

With respect to the calculation of the cost proxies for universal service, the upcoming cost proxy workshops to be conducted with the Joint Board will provide the best forum for determining the most appropriate cost models. However, it is important to point out here that the National Association of State Utility Consumer Advocates ("NASUCA") is confusing two different concepts when it argues that the Commission should reduce the current Subscriber Line Charge ("SLC") to a level that would limit the recovery of interstate common line costs to 50% of interstate common line costs. (Comments of NASUCA at 6-7).

First, the Recommended Decision declined to determine whether recovery of residual interstate loop costs constitutes a universal service subsidy (Recommended Decision at ¶¶ 769-774; see also concurring opinion of Commissioner Chong, Part VI). Accordingly, the requirements of Section 254 have no application to the Commission's ultimate disposal of any issues relating to the SLC and CCL in its Access Charge Reform proceeding (NPRM, Third Report and Order, and NOI released December 24, 1996).

Second, even if the SLC and CCL were relevant to Section 254 -- and they clearly are not -- NASUCA is confusing Section 254's admonition concerning recovery of "joint and common" costs with the entirely distinct policy issue of the recovery of residual interstate non-traffic sensitive costs. Finally, even if NASUCA were not comparing apples to oranges, the Commission in its

recent Access Charge Reform NPRM has explained why " ... the incumbent local exchange carrier may need to recover significant common costs in addition to the TSLRIC calculation of exchange access" (NPRM at ¶ 221). Thus, NASUCA's claim clearly should be rejected.

II. THE MOST REASONABLE, COMPETITIVELY NEUTRAL AND EXPLICIT METHOD OF COLLECTING MONIES FOR THE UNIVERSAL SERVICE FUND IS TO REQUIRE THAT CARRIERS INCLUDE A LINE ITEM ON END USERS' BILLS.

In the Recommended Decision, the Joint Board discussed several options for assessing contributions to the universal service fund. The Joint Board recommended a charge on carriers providing interstate service based on gross revenues net payments to other carriers. This recommendation was based, in part, on the Board's conclusion that that method was competitively neutral and easy to administer.

After further analysis and review of the various comments submitted in this proceeding, the members of ALTS have concluded that, in fact, the best way to ensure competitive neutrality in the collection of monies for universal service purposes is to require an explicit retail surcharge based on a percentage of the total inter- and intrastate telecommunications bill.

Such a plan would be competitively neutral and would prevent a carrier with substantial market power in one market from passing on all of its universal service costs to its customers in that market and thus gaining an unfair advantage against its

competitors in more elastic markets. If an ILEC that provides both local service and competitive services, for example, were free to pass on the costs of its universal service contribution only to its local customers in its service area, the ILEC's competitors in the more competitive markets would be severely disadvantaged. A surcharge is also the only way of making sure that universal service funding is explicit, as required by the Act.[3] Finally, such a mechanism is extremely easy to administer and is an effective means of collecting funds.[4]

The Joint Board's proposal would not be inconsistent with various requirements of the '96 Act but could favor one type of competitor over another (the charge based on gross revenues net payments to other carriers could favor resellers over facilities-based carriers) and would not be explicit as far as customers are concerned. Congress intended that universal service support no longer be hidden. Consumers have the right to know that they are supporting universal service and the extent to which they support it.

The Joint Board rejected the suggestion of a retail end user surcharge as being inconsistent with the "statutory requirement that carriers, not consumers, finance support mechanisms."

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[3] The Conference Report states that the Committee intended that all support by "clearly identified." Conference Report at 131.

[4] As the comments submitted by the State of California note, that state already collects revenues for three existing universal service programs via end user surcharges. Comments of the People of California at 15.

Recommended Decision at para. 812. However, the Joint Board provided no reasoning to support its conclusion. In fact the statute has no prohibition against an end user surcharge, nor could it prevent a carrier from voluntarily disclosing that a portion of the customer's bill will be used for universal service purposes. While the statute requires that all telecommunications carriers that provide interstate telecommunications services "contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service", it certainly does not prohibit carriers from including the costs of any universal service contribution in its customers' rates.[5] Indeed a carrier must do so if it is to remain profitable as universal service support is a cost of doing business. Nor is it likely that Congress intended that universal service funding should come from carriers' shareholders exclusively, as opposed to end users. The more reasonable interpretation is that Congress recognized that these costs would be considered a cost of doing business and eventually be borne by the end users. And, it is undeniable that carriers by assessing, collecting and remitting the universal service funds will be "contributing" to the fund.

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[5] Commissioner Chong, in her separate statement, concluded; "*Let us make no mistake about who will foot the bill for this universal service program. It is not the telecommunications carriers, but the users of telecommunications services to whom those costs will be passed through in a competitive marketplace.*" (italics in original).

Obviously, end users ultimately pay the universal service support through one means or another. As Worldcom suggests in its comments, the "only question is whether [the universal service contribution] is implicitly included in a carrier's rates, or explicitly delineated on the consumer's bill as part of its service charges." Worldcom Comments at Section J.1. (emphasis added). Congress intended that all support be explicit.

An added benefit of requiring an explicit retail surcharge for the funding of universal service support is that it is the most effective way of keeping the universal service funds at the lowest level necessary to satisfy the statutory mandate of ensuring that quality services be available at just reasonable and affordable rates. To the extent that universal service funding is visible to all who are supporting it, there will necessarily be pressure to lower the amount assessed and collected to the minimum required by law. Public pressure will ensure that the universal service system is sustainable and operates efficiently.

III. UNIVERSAL SERVICE FUNDING SHOULD BE BASED ON BOTH INTERSTATE AND INTRASTATE SERVICE BILLINGS OR REVENUES.

The retail end user charge should be based on a percentage of the total inter and intrastate telecommunications charges. In its Recommended Decision the Joint Board found that funding for schools and libraries, should be based on inter and intrastate

telecommunications revenues of carriers but made no decision on the funding for high cost areas. As noted above, the members of ALTS have concluded that the only competitively neutral and explicit means of collecting universal service funds is by an end user retail surcharge. Regardless of whether the Commission adopts ALTS' position with respect to the end user charge, or the Recommended Decision of the Joint Board with respect to basing contributions on gross telecommunications revenues net of payments to other carriers, the Commission should use both interstate and intrastate charges (or revenues) as a base for all universal service contributions.

Basing contributions on interstate service fees or revenues would be unfair to end users or carriers and violate the principle of competitive neutrality. Competing providers of service have vastly different mixes of interstate and intrastate revenues and end users have vastly different usage patterns. In addition, the majority of services supported by Universal Service will be intrastate in nature and thus intrastate revenues logically should support universal service. As a practical matter it also makes sense to base contributions on as large a base as possible.

With the exception of a number of the incumbent LECs, whose revenues are primarily intrastate and thus would contribute a relatively small share of universal service support if support were based only upon interstate revenues, and some states, the majority of the commenters support the use of both inter and

intrastate revenues (or billings) as the base for federal universal service support.[6] If the Commission were to base support payments only on interstate billings or revenues, the basic problems that the statute was intended to alleviate would still exist; there would continue to be a significant imbalance in the amount various carriers or their subscribers would pay for universal service programs.

There is absolutely no impediment to the Commission basing contributions on inter- and intrastate billings or revenues. Some persons have argued that to base contributions (were they to come directly from carriers) on inter- and intrastate revenues is discriminatory because carriers with only intrastate traffic would not be required to contribute (because section 254(d) only applies to carriers providing interstate telecommunications services") while their competitors with both inter- and intrastate telecommunications revenues would be required to contribute.

First, of course, the vast majority of carriers provide both inter- and intrastate traffic so there would be few, if any, carriers who would not contribute to the fund based on their lack of provision of interstate telecommunications services.

Second, any implication that Section 2(b) or any other

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[6] See, e.g., Comments of AT&T at 4; Comments of Rural Telephone Coalition at 29; Comments of Competition Policy Institute at 6; Comments of NCTA at 29, Comments of Time Warner at 6-10; Comments of MFS at 40; But see Comments of NYNEX at 5-6 (the Commission should only limit its assessment mechanism to interstate retail revenues unless it adopts a plan for the voluntary participation of the states); SBC Comments at 18.

section of the Act prevents the Commission from including intrastate billings or revenues in its calculation of the amount of contribution from end users or interstate carriers should be summarily dismissed. At least with respect to Universal Service, the Commission clearly has jurisdiction to take actions that might otherwise be found impermissible under Section 2(b). Section 254 specifically gives the Commission jurisdiction to take the actions necessary to ensure that local rates are reasonable. In addition, of course the raising of Universal Service funds does not directly involve the Commission in setting "charges, classifications, practices, services or regulations for or in connection with interstate communications."

IV. MANY COMMENTERS AGREE WITH ALTS THAT INSIDE WIRING DOES NOT QUALIFY FOR UNIVERSAL SERVICE SUPPORT UNDER SECTION 254.

ALTS has consistently argued, both in its August 2, 1996 Response to the Commission's Request for Additional Comment and its December 19th submission, that the provision of inside wiring to schools and libraries, while an important and extremely desirable social goal, cannot be considered eligible for universal service support under the '96 Act. ALTS will not repeat its arguments here, but does want the Commission to recognize that a wide variety of commenters in this proceeding agree with ALTS with respect to this issue. Telecommunications carriers who often find themselves on the opposite sides of many issues have generally argued that inside wiring should not be

included both as a legal matter and because it raises a number of issues as to the inclusion of other non-service items (like computers and other terminal equipment) that may be necessary for schools and libraries to make use of telecommunications services but which are themselves not telecommunications services.[7] At the same time, it appears that the only comments that support the inclusion of inside wiring are a few state and local governments and educational institutions, hardly objective observers with respect to this issue.

V. COMPETITIVE BIDDING MUST PROCEED REQUESTS FOR SUPPORT FOR SCHOOLS AND LIBRARIES.

In its December 19 Comments ALTS argued that the Commission should make it clear the schools and libraries that have entered into contracts with carriers prior to the adoption of the rules relating to discounts for such entities should not automatically be eligible for the discounts. The concern is that the discounts should be applied to the lowest available price. If it were available from all existing contracts the inherent market advantage of the incumbent LECs would be increased significantly.

Questions have been raised about how to accomplish the goal of ensuring that any discount is taken from the lowest available price when legally binding contracts are in effect. Obviously there is little problem when the contracts in effect are short

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[7] See, e.g., Comments of GTE at 89; Comments of AT&T at 18; Comments of MFS at 30; Comments of SBC Communications at 43; Comments of USTA at 34; Comments of Citizens Utilities Company at 15.

term. The problem arises when contracts are for relatively long terms, e.g., more than a year.

This situation is similar to what occurred in the Expanded Interconnection proceeding.[8] In that proceeding the Commission concluded that because long term special access arrangements could prevent customers from obtaining the benefits of the competitive environment, a "fresh look" policy needed to be adopted. Specifically, the Commission decided to limit the charges an incumbent local exchange carrier could impose on customers terminating a long-term arrangement to an amount that would place the customer and the incumbent local exchange carrier in the same position they would have been in had the customer originally chosen a shorter term arrangement. The "fresh look" option in that case was limited to customers with existing contracts of at least three years.

ALTS suggests that the Commission adopt a similar policy here. However, because of the differing parties involved, ALTS suggests that such a "fresh look" period should apply to existing contracts of more than a year that schools and libraries have entered into prior to the adoption of the rules. Schools and libraries on average are presumably smaller entities and less sophisticated telecommunications service purchasers than the large customers considered in the Expanded Interconnection decision. Therefore, it makes sense to allow a "fresh look" at contracts of a shorter duration than in the previous case. Contracts that were entered into pursuant to competitive bids

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[8] See Expanded Interconnection with Local Telephone Company Facilities, CC Dkt No. 91-141, Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 7341 (1993).

would be exempt from this requirement.

CONCLUSION

For the foregoing reasons ALTS respectfully requests that the Commission adopt the recommended decision with the changes and additions set forth in ALTS initial comments and above.

Respectfully submitted,

By: Emily M. Williams

Emily M. Williams
Association for Local Telecommunications Services
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 466-0658

Richard J. Metzger
General Counsel

January 10, 1997

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Replies of the Association for Local Telecommunications Services was served January 10, 1997, on the following persons by First-Class Mail or by hand service, as indicated.

M. Louise Banzon

The Honorable Reed E. Hundt, Chairman*
Federal Communications Commission
1919 M Street, N.W,Room 814
Washington, D.C. 20554

The Honorable Rachelle B. Chong*
Federal Communications Commission
1919 M Street, N.W. Room 844
Washington, D.C. 20554

The Honorable Susan Ness, Commissioner*
Federal Communications Commission
1919 M Street, N.W. Room 832
Washington, D.C. 20554

James Casserly*
Senior Legal Advisor
Office of Commr. Ness
FCC
1919 M St., NW Room 832
Washington, D.C. 20554

Daniel Gonzalez*
Legal Advisor
Office of Commr. Chong
FCC
1919 M St., NW Room 844
Washington, D.C. 20554

Regina Keeney*
Chief, Common Carrier Bureau
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

ITS*
2100 M Street, N.W., Suite 140
Washington, D.C. 20554

* By Hand

The Honorable Julia Johnson,
Commissioner
Florida Public Service
Commission
Capital Circle Office Center
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850

The Honorable Kenneth
McClure, Vice Chairman
The Missouri Public Service
Commission
301 West High St., Suite 530
Jefferson City, MO 65102

The Honorable Sharon L.
Nelson., Chairman
Washington Utilities and
Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

The Honorable Laska
Schoenfelder, Commissioner
South Dakota Public
Utilities Commission
500 E. Capital Ave.
Pierre, South Dakota 57501

Martha S. Hogerty
Public Counsel for the State
of Missouri
P.O. Box 7800
Harry S. Truman Building,
Room 250
Jefferson City, MO 65102

Anna Gomez
Federal Staff Chair
Federal Communications
Commission
2100 M Street, N.W.
Suite 8617
Washington, D.C. 20036

Paul E. Pederson
State Staff Chair
Missouri Public Service
Commission
P.O. Box 360
Truman State Office Bldg.
Jefferson City, MO 65102

Lisa Boehley
Federal Comm. Commission
2100 M Street, N.W.
Room 8605
Washington, D.C. 20554

Charles Bolle
South Dakota Public
Utilities Commission
State Capital, 500 E.
Capital Ave.
Pierre, S.D. 57501-5070

Deonne Bruning
Nebraska Public Service
Commission
300 The Atrium
1200 N St., P.O. Box 94927
Lincoln, NE 68509-4927

John Clark
FCC
2100 M St., NW Room 8619
Washington, D.C. 20554

Bryan Clopton
FCC
2100 M St., NW Room 8615
Washington, D.C. 20554

Irene Flannery
FCC
2100 M St., NW Room 8922
Washington, D.C. 20554

Emily Hoffnar
FCC
2100 M St., NW Room 8623
Washington, D.C. 20554

L. Charles Keller
FCC
2100 M St., NW Room 8918
Washington, D.C. 20554

Lorraine Kenyon
Alaska Public Utilities
Commission
1016 West Sixth Ave.
Suite 400
Anchorage, Alaska 99501

David Krech
FCC
2025 M St., NW Room 7130
Washington, D.C. 20554

Debra M. Kriete
Pennsylvania Public
Utilities Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Diane Law
FCC
2100 M St., NW Room 8920
Washington, D.C. 20554

Mark Long
Florida Public Service
Commission
2540 Shumard Oak Blvd
Gerald Gunter Building
Tallahassee, FL 32399-0850

Robert Loube
FCC
2100 M St., NW Room 8914
Washington, D.C. 20554

Samuel Loudenslager
Arkansas Public Service
Commission
P.O.Box 400
Little Rock, AR 72203-0400

Sandra Makeeff
Iowa Utilities Board
Lucas State Office Building
Des Moines, Iowa 50319

Philip F. McClelland
Pennsylvania Office of
Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Michael A. McRae
D.C. Office of the People's
Counsel
1133 15th Street, N.W.
Suite 500
Washington, D.C. 20005

Tejal Mehta
FCC
2100 M St., NW Room 8625
Washington, D.C. 20554

Terry Monroe
New York Public Service
Commission
Three Empire Plaza
Albany, New York 12223

John Morabito
Deputy Chief, Accounting
and Audits Division
Common Carrier Bureau
FCC
2000 L St., N.W. Suite 812
Washington, D.C. 20554

Mark Nadel
Federal Communications
Commission
2100 M St.,N.W. Room 8916
Washington, D.C. 20554

Lee Palagyi
Washington Utilities and
Transportation Comm.
1300 S. Evergreen Pk.Dr.,SW
Olympia, WA 98504

Kimberly Parker
Federal Communications
Commission
2100 M Street, N.W.
Suite 8609
Washington, D.C. 20554

Jeanine Poltronieri
Federal Communications
Commission
2100 M Street, N.W.
Suite 8924
Washington, D.C. 20554

Barry Payne
Indiana Office of Utility
Consumer Counselor
100 North Senate Avenue,
Room N501
Indianapolis, IN 46204-2215

Michael Pryor
FCC
2100 M Street, NW Rm. 8905
Washington, D.C. 20554

James Bradford Ramsay
National Association of
Regulatory Utility
Commissioners
P.O. Box 684
Washington, D.C. 20044-0684

Brian Roberts
California Public Utilities
Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Gary Seigel
Federal Communications
Commission
2000 L Street, N.W.
Suite 812
Washington, D.C. 20554

Richard D. Smith
Federal Communications
Commission
2100 M Street, N.W.
Suite 8605
Washington, D.C. 20554

Pamela Szymczak
Federal Communications
Commission
2100 M Street, N.W.
Suite 8912
Washington, D.C. 20036

Lori Wright
Federal Communciations Comm.
2100 M Street, N.W.
Room 8603
Washington, D.C. 20554